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No. 77-483

In the Supreme Court of the United States

OCTOBER TERM, 1977

EDWARD SAFFRON, PETITIONER

v.

DEPARTMENT OF THE NAVY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 561 F. 2d 938. The order of the district court (Pet. App. 1b) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 1977. The petition for a writ of certiorari was filed on September 26, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's claim for reinstatement and back pay is barred by the six-year statute of limitation set forth in 28 U.S.C. 2401(a).

STATUTE INVOLVED

28 U.S.C. 2401(a) provides in relevant part:

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. * * *

STATEMENT

In 1975, petitioner, a discharged civilian employee of the United States Navy, brought this action in the United States District Court for the District of Columbia against the Department of the Navy and certain of its officers, seeking reinstatement and damages, including back pay, on the ground that his termination in 1965 was improper (Pet. App. 2a-3a).

Petitioner had been injured in the course of his employment as an aircraft engine mechanic for the Navy. After treatment and evaluation of his condition, doctors certified him fit for light work. He refused, however, to perform the assigned tasks, and in September 1965 he was discharged for insubordination. He exhausted his Civil Service remedies on April 26, 1966, when the Civil Service Commission Board of Appeals and Review affirmed his termination (Pet. App. 2a). He was informed by the employees' union attorneys, who had represented him, that his case did not merit further litigation (*ibid.*). Thereafter, for approximately nine years, petitioner sought reinstatement by contacting public interest groups, lawyers, and public officials, as well as Civil Service and Naval personnel.

The district court held that petitioner's action was barred, reasoning that a remedy at law for money damages was foreclosed by the statute of limitations

contained in 28 U.S.C. 2401(a), and that the equitable relief of reinstatement was barred by laches (Pet. App. 1b). The court of appeals affirmed, holding that petitioner's entire claim was barred by the statute of limitations applicable to "civil actions commenced against the United States" that is set forth in 28 U.S.C. 2401(a) (Pet. App. 8a-17a).

ARGUMENT

1. The statute of limitations contained in 28 U.S.C. 2401(a) applies to actions asserting equitable as well as legal claims against the United States. Contrary to petitioner's assertion (Pet. 7-8), Congress in waiving sovereign immunity may impose a statute of limitations on equitable claims. *Russell* v. *Todd*, 309 U.S. 280, 287; *Patterson* v. *Hewitt*, 195 U.S. 309, 318-319. Congress has done so by providing, in 28 U.S.C. 2401(a), that "every civil action" commenced against the United States shall be barred unless a complaint is filed within six years after the right of action first accrues. See *Boruski* v. *United States*, 493 F. 2d 301, 304 n. 5 (C.A. 2) (action to change honorable military discharge barred by 28 U.S.C. 2401(a)); *Werner* v. *United States*, 188 F. 2d 266 (C.A. 9) (28 U.S.C. 2401(a) applies to an equitable claim for reformation of a contract); *Mathis* v. *Laird*, 324 F. Supp 885, affirmed on other grounds, 457 F. 2d 926 (C.A. 5), certiorari denied, 409 U.S. 871 (correction of dishonorable military discharge and action for backpay and damages barred by 28 U.S.C. 2401(a)). See also *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 510 (action for equitable adjustment under disputes clause of government contract is "civil action" subject to Section 2401(a)).

The legislative history of 28 U.S.C. 2401(a) removes any doubt that the statute is intended to bar equitable as well as legal claims against the United States brought more than six years after the cause of action first accrues. The provision was enacted as part of the 1948 revision of the Judicial Code. 62 Stat. 869. It was intended to impose the same period of limitation as that set forth in Section 41(20) of Title 28, United States Code, 1940 edition, for cases brought under the Tucker Act, 28 U.S.C. 1346 (a), with only "changes * * * in phraseology". H.R. Rep. No. 308, 80th Cong., 1st Sess., p. A185 (1947). The earlier provision, Section 41(20), had explicitly stated that both legal and equitable actions were subject to a six-year statute of limitations:

> The district courts shall have original jurisdiction * * *
>
> Concurrent with the Court of Claims of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States *either in a court of law, equity, or admiralty*, if the United States were suable, * * * *provided* * * * That no suit against the Government of the United States shall be allowed under this paragraph unless the same *shall have been brought within six years* after the right accrued for which the claim is made. [Emphasis added.]

In revising the Judicial Code to place the general statute of limitations in 28 U.S.C. 2401(a), Congress made no distinction between equitable and legal claims but instead

referred generically to civil actions, presumably to conform the statutory text to the unitary approach of the Federal Rules of Civil Procedure, which treat both actions for legal relief and suits for equitable relief as "civil actions." See Rules 1 and 2, Fed. R. Civ. P. The statute of limitations set forth in 28 U.S.C. 2401(a) therefore clearly "extend[s] to the equitable as well as common law features of [petitioner's] claim" (Pet. App. 16a).

2. Petitioner's action would be barred even if 28 U.S.C. 2401(a) applied only to actions for legal relief. "[W]hen the [equitable] jurisdiction of the federal court is concurrent with that at law, or the suit is brought in aid of a legal right, equity will withhold its remedy if the legal right is barred by the * * * statute of limitations." *Russell* v. *Todd, supra*, 309 U.S. at 289. The court of appeals correctly determined that petitioner's equitable and legal claims all pressed petitioner's "right * * * to freedom from legally unjustified molestation in the job he held as an employee of the Navy," and therefore "[t]here is in fact but a single right and single default involved * * *' " (Pet. App. 9a-10a).[1] Where "the right * * * is single and indivisible * * *, and remediation does not lie exclusively within the domain of equity, the availability of

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[1]Petitioner alleges a conflict between the decision in this case and the Third Circuit's decisions in *Churma* v. *United States Steel Corp.*, 514 F. 2d 589, and *Gruca* v. *United States Steel Corp.*, 495 F. 2d 1252. Those cases appear to apply a somewhat different test of concurrency than the District of Columbia Circuit followed in this case (see Pet. App. 11a, n. 40). There is no indication, however, that the Third Circuit would have reached a different result in this case, since *Churma* and *Gruca* involved suits against a private employer and the Third Circuit therefore had no cause to decide whether the suits would be barred by 28 U.S.C. 2401(a).

legal relief to enforce the underlying right summons the statute of limitations into play as to the whole" (Pet. App. 12a). See also *Cope* v. *Anderson*, 331 U.S. 461, 463-464; *Metropolitan Bank* v. *St. Louis Dispatch Co.*, 149 U.S. 436, 448.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2]Even if petitioner were correct his argument that the court of appeals erred in applying the statute of limitations to his claim for reinstatement, he still could not recover, because, as the district court held, laches bars his action (see Pet. App. 1b). Petitioner's efforts to obtain relief through administrative or political channels did not ameliorate the unreasonableness of his nine year delay in instituting the present action. *Grasse* v. *Snyder*, 192 F. 2d 35 (C.A. D.C.).

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